

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant also later stated that at that time his back was hurting. Claimant acknowledges he did not report the incident until the following day when he spoke to his lead man, Richard Dell. Respondent acknowledges claimant discussed the situation with Mr. Dell on January 6, 1998. Mr. Dell's written statement of January 23, 1998, was placed into evidence at the preliminary hearing of April 8, 1998.

Respondent contends claimant failed to prove that he suffered accidental injury on the date alleged. Respondent further contends that claimant's back symptoms do not relate to the incident on January 5, 1998, but instead result from an injury suffered while claimant was in the Navy in 1989.

It is noted in the medical records that claimant did discuss back symptoms while receiving treatment in the hospital. In her January 24, 1998, medical notes, Lori L. Stonehocker, D.O., mentions claimant's symptoms involving both the abdominal and back muscles. A February 3, 1998, medical note also indicates claimant was experiencing twitching in the back muscles.

Claimant was examined and treated by numerous doctors. In a May 14, 1998, letter to Dr. Stonehacker, Sharon L. McKinney, D.O., a physical medicine and rehabilitation specialist, diagnosed claimant with a strain/sprain to the left abdominal muscles and latissimus dorsi bilaterally. This indicates that claimant was experiencing both abdominal and low back symptoms resulting from this injury. Dr. McKinney stated that these symptoms were the result of claimant's work injury while using a grinder on January 5, 1998.

Claimant was also examined by Sergio Delgado, M.D., on May 6, 1999. Dr. Delgado also diagnosed residuals of abdominal wall strain, chronic low back pain with aggravation by work activities, hamstring tightness and possible sciatic irritation bilaterally.

It is acknowledged by the parties that claimant has a long history of low back problems stemming from an injury suffered while in the Navy in 1989. However, the medical reports also indicate that the January 5, 1998, incident, which occurred while claimant worked with the grinder in what appears to be a difficult position did, at least temporarily, both aggravate claimant's low back symptoms and cause an onset of abdominal symptoms. The Appeals Board finds that claimant has proven accidental injury arising out of and in the course of employment, and also a connection between the ongoing low back symptoms and the January 5, 1998, incident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated August 12, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
Gregory D. Worth, Lenexa, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director